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In the decade since the Supreme Court decision of 1954 Southern states have devised many schemes to prevent school desegregation. Most of them are now eliminated or rejected as unconstitutional by Federal courts. One plan to evade integration which the courts have not yet overthrown is the tuition grant or "freedom of choice" scheme. This plan gives state or local tuition money to children selecting a private school as their choice of an educational institution. An examination of the tuition plan in five Southern States, their operation and costs, court litigation on their legality, and expressions for and against the plans are discussed as guides in determining the worth of such plans.

In Virginia, where the "freedom of choice" grants originated, school children can receive tuition grants to nonsectarian private schools, and such private institutions have flourished. At the same time, Virginia public schools are among the Nation's poorest academically, and the public school teachers are among the lowest paid and least schooled. In Georgia, children already in private schools overwhelmingly exercised the new "freedom of choice" for private white schools, and the system proved to be both a force and a failure. Tuition grants in Louisiana have cost the State $53,600,000, and exorbitant costs in South Carolina and Alabama are expected if districts continue to apply for grants.

In summary, tuition grants and programs exercising the freedom not to associate with Negroes appear to have cost enormously and achieved little. They have helped to evade Federal law and to delay adjustment to integration.

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New South

EDUCATION

APRIL 1964

SIX YEARS OF SOUTHERN FREE CHOICE

Office of Education-EEOP

Research and Materials Branch

Bennett O. Stalvey

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Strictly Subjective

By MARGARET LONG

New South

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CONTENTS

Free Choice and Tuition Grants in Five Southern States 3

Strictly Subjective 2

Illustrations by Marge Manderson 12, 15

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New South is published 11 times a year. Subscription cost is $2 a year. Single copies are 20 cents each, or less in quantity.

THIS *New South* account of the tuition grant era by Staige Blackford calls Leon S. Dure of Keswick, Virginia, "the father of the free choice doctrine," an intellectual exercise in which Mr. Dure discovered two new "freedoms" which seemed to him, and to many southern communities and state governments, to justify public expense of private schooling for children whose parents did not want them in school "associating" with Negroes.

Mr. Dure undoubtedly is the father of this doctrine, and his cerebral persuasions certainly helped dissuade Virginians from their "massive resistance" and general school-closing—with, of course, some vigorous assistance from the National Association for the Advancement of Colored People and other factions and individuals unwilling to surrender public education rather than segregate it. But Mr. Dure did convince Virginia politicians, and later some in other states in crisis, that they could keep public schooling and satisfy the racist free-choosers with state-paid tuition to white private schools where their children would be sheltered from the odium, or fear, or distaste, or whatever they so dreaded in the prospect of "association" with colored classmates.

With missionary zeal Mr. Dure, wrote, spoke, ran advertisements, sent letters to editors and lobbied with legislators, all at his own expense in the early days. I understand he got some foundation money later, to travel and talk in other southern state capitals of school crisis, espousing his "free choice" idea and the private school tuition alternative to school shutdowns.

His success with segregationist officialdom in the Deep South seems notable, though a behind-the-scenes operation, perhaps in spite of the hammering intelligence and relentless rea-

(Continued on page 13)

Free Choice and Tuition Grants in Five Southern States

By Staige D. Blackford

IN THE DIE-HARD decade since the Supreme Court's decision of May 17, 1954, the eleven original states of the old Confederacy devised many brutal, bland and intricate schemes to prevent school desegregation—from politically invited riots and school shutdowns to pupil placement, restrictive transfer of Negro children and grade-a-year plans —most of which are now eliminated or rejected as unconstitutional by federal courts.

One plan to evade integration which the courts have not yet overthrown and which is not overtly tied to segregation is the tuition grant or "freedom of choice" scheme to give state or local tuition money, or both, to children selecting the school "of their choice," including private schools for whites. This plan is now before the Supreme Court in the final appeal from the Prince Edward County, Va., school closing and granting of first tuition funds to white children five years ago.

Seven states have enacted freedom of choice laws and four of them have appropriated public money for private school tuition. North Carolina's tuition grant law has never been financed or invoked. Arkansas' law was nullified by a federal court in 1959.

This report examines the tuition grant plans of Virginia, Georgia, Louisiana, South Carolina and Alabama, their operation and costs, state and federal court litigation on their legality, and the ideas and political expression espousing and opposing free choice of private schooling at public expense.

Mr. Blackford is research director of the Southern Regional Council.

Virginia

In 1956, Virginia amended the state constitution to permit the General Assembly to appropriate funds for the education of students at nonsectarian private schools. With this amendment the General Assembly adopted a series of tuition grant laws at its 1956 extra session.

Pupils in Norfolk, Charlottesville, and Front Royal received tuition grants during the first term of the 1958-59 school year after their public schools were closed by the Governor's order.

In 1959, when Virginia shifted from "massive resistance" to "freedom of choice," the tuition grant laws were repealed and replaced by new ones which made no reference to the desegregation of schools or to race. According to the State Board of Education, 82 counties and cities in Virginia are currently involved in the program. Below is a tabulation of tuition grants and state and local funds spent for them.

From 1958 through the 1962-63 fiscal year:

	No.	*Total*	*State Funds*	*Local Funds*
1958-59	6,932	$ 501,107.00	$ 501,107.00	
1959-60	4,768	$1,034.392.98	$ 437,851.84	$ 596,541.14
1960-61	8,127	$1,755,543.72	$1,014,582.14	$ 740,961.58
1961-62	8,518	$2,074,690.31	$1,062,694.61	$1,011,995.70
1962-63	9,489	$2,252,995.07	$1,190,418.39	$1,062,576.68
Total	37,834	$7,618,729.08	$4,206,653.98	$3,412,075.10

Every child "between the ages of six and 20 who has not finished or graduated from high school, and who desires to attend a nonsectarian private school located in or outside, or a public school located outside, the locality in which such child resides shall be eligible and entitled to receive a state scholarship," the Virginia tuition law says. In general, the parents of children attending white private schools or public schools in a locality other than that in which the child lives, have been receiving state and local grants up to $250 a year for students in elementary schools and up to $275 for high school students. Parents pay the tuition costs, and are reimbursed by the state and the localities. Thus, public money is channeled into private schools.

About 5,000 students are now enrolled in private schools in nine communities (Norfolk, Prince Edward County, Powhatan, Charlottesville, Warren County, Surry County, King and Queen County, Hopewell, and Chesterfield County, the last three of whose private schools opened this year) and there are tentative plans for more such schools if Negroes are assigned to the white schools in other areas.

Supporters of the private schools defend them as an extension of "freedom of choice." Virginians, they contend, were always free to choose between public and private schools. They also claim that there is no great extra expense to the public schools, and that in some cases the tuition grant plan might even save money; it cuts the cost of educating these children in public schools, with the additional facilities and teachers that would be entailed.

But opposition to the plan is growing, particularly in the Roanoke and Norfolk areas.

Mayor Murray A. Stoller of Roanoke has called the grants a "slow but sure way to kill the public school system in Virginia." Roanoke School Superintendent E. W. Rushton last fall said the cost rise for the grants was "alarming" and that spending public money for private school education was "questionable."

The Roanoke Board of Principals and Supervisors in November 1963, passed a resolution requesting "the General Assembly of Virginia to enact legislation which will prevent the use of public money for private education."

Introducing the resolution, Bristow W. Hardin, principal of Roanoke's West End High School, charged: "The grants are so misused as to threaten public schools of our day. The insidious attitude that it's o. k. to use public funds for private schools is growing. The majority of pupils in our state have been hurt because of the grants."

The Roanoke resolution acknowledged the value of private schools in education, but protested that a citizen's taxes do not constitute a tuition for the education of his children, but are for the education of all children; freedom of choice legislation was not intended to promote use of public money for private instruction; many persons are beginning to regard tuition grants as "tax rebates;" free public schools of Virginia are desperately in need of funds to maintain even their present standards.

(Virginia spends less proportionately for education than any of the southeastern states and has the lowest percentage of degree-holding teachers among them, according to the Virginia Education Association. Compared with other southern states, Virginia ranks lowest in the share of personal income turned to school use, 3.5%. Virginia

teacher salaries still rank 36th in the nation, as they did ten years ago.)

In Norfolk, where 6,606 grants cost the city and state $1.5 million between 1959 and 1962-63 and the school board is expected to have awarded about 2 million dollars in tuition grants by the end of this school year, the *Virginian-Pilot* strongly opposes the program. In a March 4, 1963, editorial for example, the paper commented:

> At best the original purpose of the program was questionable to use public funds to underwrite private prejudice. But the grants are a joke today. Many, if not most, of those who receive them would be attending private schools anyway, and the state is simply picking up the tab for parents who should be paying their own way.

Henry E. Howell, Jr., of Norfolk, a Democratic member of Virginia's House of Delegates, last January introduced a bill permitting cities or counties to discontinue the tuition grants and drop out of the program. A group of Republican delegates offered a similar bill, but the House Education Committee rejected both.

The leading lawyer of the National Association for the Advancement of Colored People in Virginia, S. W. Tucker of Emporia, has announced his intention to file an omnibus suit for desegregation of private schools benefitting from tuition grants. The suit may be obviated, though, if federal courts rule the grant program unconstitutional in the Prince Edward case of *Griffin v. County School Board* now before the Supreme Court and in *Pettaway v. Surry County* pending before the U. S. Court of Appeals for the Fourth Circuit.

Prince Edward Negroes began their long journey to the Supreme Court in 1951 with a school integration suit which has since incurred eleven court decisions and was a case in the historic 1954 decision that separate schools are unequal. Rather than integrate county schools, Prince Edward closed them all in 1959, and the Prince Edward Foundation, a private corporation, promptly opened an academy for white children with aid from state and county tuition grants and tax credits for those who contributed money to the new school.

Leon S. Dure, former newspaperman retired to farming at Keswick, conceived the new "right" of "Freedom of Association" and choice of schools to assure what he called "freedom not to associate" with Negroes, a philosophy which politicians adopted to justify the tuition grant plan. Mr. Dure wrote, spoke and lobbied his idea into a basis and a battlecry — shortened to Freedom of Choice—not only for Virginia's, but other states,' tuition grant laws. The doctrine was perhaps first officially acknowledged in the recommendations of the Governor's Gray Commission which recommended tuition grants for children to attend private schools to escape segregated ones and other provisions like local pupil assignment and amendment of compulsory school attendance, before the state's "massive resistance."

In 1961 Prince Edward Negroes again got to federal District Court, where Judge Oren Lewis blocked payment of the grants and the allowance of tax credits in the county. In 1962 Judge Lewis held that the county schools could not constitutionally remain closed while other public schools operated in Virginia.

The fourth circuit Court of Appeals, however, ruled the next year that Lewis should not have decided on the issue, of operating schools for some Virginia children and not those in Prince Edward, until the Virginia Supreme Court of Appeals ruled on the applicable state law. In December of 1963 the Virginia Supreme Court

did so and decided that the state constitution compels neither the state nor the county to reopen public schools or furnish funds for them.

The Justice Department, which had entered the case in 1962, disputed the Virginia court's decision and asked the Supreme Court to hear the entire Prince Edward case at this session. Federal courts *can* compel county officials to open their schools and assess taxes for their support, Justice contended. Public financing of private schools through tuition grants has been ruled out by earlier Supreme Court decisions, Justice lawyers also contended.

At the March 30 hearing before the high court, U. S. Solicitor General Archibald Cox, as a friend of the court, urged it to end "an experiment in ignorance" in Prince Edward County, and argued that no state may abandon one county's public schools to avoid segregation while it supports schools everywhere else in the state, thus denying equal protection of the laws to both Negro and white children in Prince Edward. Moreover, he said, the case involves "the greatest of injustices—the denial of equal education to children on account of racial considerations."

Attorney J. Segar Gravatt, for county authorities, denied that education was abandoned in Prince Edward; rather, he said, its people, exercising local option, chose another way to educate their children. Thus to let every family choose a private school, with the help of public funds, has "enlarged the liberty of the citizen" with more choices, he argued. Gravatt also urged the Court to remove the injunction against tuition grants for private schooling if it ordered public schools re-opened, not to "take away the liberties of the people."

If the Court rules against Prince Edward, the county should have public schools for the first time in five years.

Surry County, Va., planned to accept desegregation of the county's only white school in the fall of 1963. But all white students dropped out to go to Surry Academy, a newly opened private school. So, the white public school closed in September and the seven Negro children enrolled in it returned to their all-Negro schools.

NAACP lawyers sought a court order reopening the public school and ending tuition grants at Surry Academy, but Federal District Judge D. Butzner denied both orders. The attorneys filed a brief with the fourth circuit Court of Appeals in which they contended that through its tuition grant system and in other ways Virginia is perpetuating segregated education in Surry. The hearing on the appeal is set for April 27.

The fate of Virginia's tuition grant system is now in the hands of federal justices. And Virginia, where the "freedom of choice" doctrine was may well be the scene of its legal death.

Even Senator Mosby B. Perrow, who led the fight for "freedom of choice" in the 1959 General Assembly, now thinks the plan should be scrapped. Newly elected chairman of the State Board of Education, Mr. Perrow recently said the plan "is beginning to show signs of wear and tear," and that "while probably it will no longer be needed," it "very definitely had its place in a period of transition."

Dure, the father of the free choice doctrine, said Perrow's comment "tells you a good bit about the real beliefs of some of those who proclaimed educational freedom—as a temporary expedient," and that "it foreshadows a political fight . . . between those who really do believe in freedom and those who never have."

Georgia

Georgia's original tuition grant was passed in 1961 as part of the then Governor Ernest Vandiver's legislative package to keep the public schools open. The announced object of the law, which made no mention of race, was to provide public aid for private schooling of children whose public schools were ordered integrated.

Even as the law was passing through the General Assembly, some Georgia legislators quietly predicted that it wouldn't work. They were right.

The 1961 law did not take effect until the 1962-63 school year. When it did, few of those applying for tuition grants did so because of desegregation. Only Atlanta schools were desegregated at that time but applications came from all over the state.

The State Department of Education found that more than 80% of the applicants already had their children in private schools. Georgia paid $210,372.15 in 1,178 grants, $178.65 per pupil, in 1962-63.

When the General Assembly met in 1963, some legislators tried to repeal the law but failed. Instead, Lt. Governor Peter Zack Geer sponsored an amendment to the law which kept it on the books, but in effect killed any large-scale tuition grant program in Georgia.

Under the 1963 amendment, parents of a child may receive a tuition grant to assist with expenses at a nonsectarian private school if their county Board of Education and the Board of County Commissioners certify that the county needs grants. Without such certification, no tuition grants can be paid in any county. Local systems would have to pay part of the cost of financing the grants.

Georgia today is virtually out of the tuition grant business. Only 19 pupils in the state received grants for the current school year, all of them at Burke Academy, a non-accredited private school in Burke County. The cost to the state for these grants is expected to be less than $4,000. Three other counties certified their need, but used no grants.

Louisiana

In 1958, Louisiana amended its state constitution to allow the legislature to provide financial assistance for children to attend private, nonsectarian schools in the state. But no grants were made until the 1962-63 school year.

In Louisiana, if a student chooses to attend a private school, the state will pay him a maximum of $360 in monthly installments for the school year. The program is open to both white and Negro students.

In the 1962-63 school year, 7,359 children, 7,072 white and 287 Negro, received grants at a total cost of $2,085,314. More than 10,000 were approved for grants for the 1963-64 school year at a cost of $3.6 million.

Initially, Louisiana's tuition grants were to be administered by the State Board of Education, with local school boards. But in 1962, the legislature created the Louisiana Financial Assistance Commission and transferred control from the state Board to this agency, supposedly to separate the tuition grant program from the state's public school system. It was feared that if a lawsuit were brought challenging the program, the courts might hold that control by the State Board of Education was state control and thereby a violation of the Fourteenth Amendment to the Constitution.

Legislators are authorized to serve on the three-man commission, and currently all three positions are held by members of the Louisiana legislature.

The Public Affairs Research Council, a non-partisan research agency in Baton Rouge, issued a report in October 1963 on Louisiana's private grant-in-aid program in which it recommended the abolition of the LFAC and the transfer of its functions to the state Board of Education.

"No formal rules or regulations have been established by the commission to assist it in determining whether or not an institution is a 'school,' " the PAR report said, and contended that there is no "reasonable assurance that children attending schools under programs are not being deprived of an adequate education." PAR said that the Financial Assistance Commission has no standards to determine the adequacy of any school which qualifies under its program, no effective standards to determine whether or not the institution is in fact "a school," and no formal standards to determine whether the "school" is sectarian or not.

Further, PAR reported that the LFAC has no formal requirements on qualifications of teachers, libraries, laboratories, classroom space, or construction, lighting, and ventilation standards.

The research council cited a Lake Charles school where the principal reported that all the students attending this year received grants. The school, which opened in 1960 and had an enrollment of 50 students at the beginning of the current school year, has five teachers, three of whom have no college degree. The principal is one of the five teachers who have not completed college. The school has neither a library nor a laboratory.

The PAR report also questioned whether several of the "non-sectarian schools" approved by the LFAC were not in fact church schools.

One such school, according to the report, is located in Shreveport on property adjoining a church. The chairman of the school board is also pastor of this church, and six of the seven school board members are members of this congregation. The principal of the school is licensed as a minister. Teachers must sign a doctrinal statement of religious faith and also write personal testimonies about their Christian experience. Students are required to take a Bible course.

The PAR report also noted the recent increase in the number of private schools of Louisiana. "Of the 58 private schools now attended by grant-in-aid students, 16 have been opened during the first two years of the program's operation."

The report did point out, however, that "just over 40 per cent of the grants in 1962 were paid to students attending schools created prior to 1958, the year Louisiana instituted a grant program."

There is no drain on public school funds by the grant program in Louisiana, because $300,000 per month is allocated from the state sales to finance the grants. But the chairman of the LFAC, State Senator E. W. Gravolet, Jr., has proposed that grants be made available for students attending sectarian private schools. If the program should be extended to cover such students, the costs might come to $50 million per year.

The grant now paid to a child in a private school is, according to PAR, "considerably more than the average amount of state money spent on each child attending public elementary schools and secondary schools in fiscal 1962-63," $360 per grant-in-aid students to only $257 each for public school children. These amounts don't cover textbooks, bus transportation, and lunches which both systems provide. PAR has called for an end to "favored treatment" for the grant-in-aid students.

Although there has been no court test of Louisiana's present grant system, two Negro parents and three children tried this year to gain admittance to a private school in New Orleans attended by grant-in-aid white students. They were denied admittance in this first attempt to desegregate private schools with tuition grant support.

Attorney A. P. Tureaud, Sr., NAACP chief council in Louisiana said at the time that the applications were not an attack on the grant program, but if the Negro effort to enter the private school should fail, then the whole system of state funds for pupil's tuition at private schools would be brought under legal attack.

"We will look into this matter with a view of getting them admitted to this school," Tureaud commented. "We will take the position that this is a public school operating under the guise of a private school."

Also in New Orleans the Junior University of New Orleans, one of the largest nonsectarian private schools, floundered in a sea of troubles and sank in March. The school, heavily dependent on state tuition grants, with more than 900 students, ended 1963 $50,000 in the hole. Two days before Christmas holidays, its newly purchased building on exclusive St. Charles Avenue was closed by the city health officer because of unsanitary conditions. Parents and pupils pitched in over the holidays to clean up for a January 2 reopening.

Meantime, on December 31, 23 of the Junior University's teachers sued the school for $9,200 in overdue wages, holding up the school reopening until Mr. and Mrs. James Tharpe put up an $11,500 piece of property as a surety bond. In February a construction company also sued the money-plagued private school, claiming $20,094 for renovation of the building, and St. Charles Associates, Inc., also sued the school for a $395,838 mortgage note on the building. The building was sold at auction in February, and the school closed in March.

South Carolina

The South Carolina General Assembly passed a tuition grant law in 1963, but did not appropriate any money to pay for the program. Since that time, Charleston schools have desegregated under the order of U. S. District Court Judge Robert Martin, that District 20 (the old city section of Charleston) admit ten colored children to white schools in 1963, and permit "any or all" Negro students to enter white schools in September, 1964. Several white citizens plan to open private schools there next fall.

Apparently anticipating this move for private schools, the State Budget Control Board included $250,000 for tuition grants in its appropriations for 1964-65, and the General Assembly approved the appropriation. First grants are expected to be available in September.

Lawyers for Negroes have promised to test the tuition grant system if it is used, with the argument that if segregated schools are unconstitutional, then public money for private schools, if segregated, is also unconstitutional.

Under South Carolina's tuition grant laws, the state would make a private grant to a student equal to the per pupil cost of public education, which is about $163 a school year. Local school districts must supplement this with their per pupil cost of public schools. They make no mention of race.

Students receiving grants must attend a nonsectarian private school. A press survey last year disclosed only

eleven nonsectarian private schools in the entire state which might be eligible to take tuition grant students. All of them reported they were full, or near to capacity, for the 1963-64 school year.

The State Board of Education is charged with administering the program. To qualify for the grants, it requires a private school to employ qualified teachers, keep a proper student-teacher ratio, use courses of study approved by the state department of education, provide adequate library service, teach a required number of hours a day and offer adequate guidance service.

Although no grants were available last fall, some pupils in the Charleston area applied for them. The Columbia *State* reported in September that of 27 pupils in Charleston who had applied for grants, 26 were already enrolled in private schools.

South Carolina's tuition grant plan aroused considerable controversy in the state last year. Spartanburg was a center of lively opposition. The Spartanburg County Board of Education came out against private school tuition in any form, and Board Chairman J. W. Gaston predicted the issue would become a battleground between the up-country and low-country sections of the state. Another board member said the plan would rip the state's public education system to pieces. L. L. Hyatt of the Spartanburg Parent-Teacher Association, said the grants would waste millions in state funds "on an experiment which has proved impractical and unmanageable in Virginia and Georgia . . ." Speaking to South Carolinians last year, Georgia's state Senator James Wesberry of Atlanta called his state's grant plan "one of the worst pieces of legislation ever passed." It helped the rich and harmed the poor, and ended in failure, he said.

The South Carolina Chapter of the American Association of University Professors adopted a resolution opposing any tuition grants and questioning "diverting funds from public to private education" and the quality of education that could be offered in private schools. State Representative Harris P. Smith of Pickens voted against the grant bill which he said "could not stand a court test and would be detrimental to the public school program." The South Carolina Congress of Parents and Teachers voted against tuition grants three to one at a meeting in Greenville last spring.

A principal proponent of the plan was Charles Plowden, an education and business leader in Clarendon County. Plowden said the grants would give children of both races "full freedom of association" and would be a defense against desegregation attempts of "outsider agitators." The plan was originally recommended by Governor Russell in his 1963 inaugural address. Other strong supporters are the Charleston *News & Courier,* state Senator L. Marion Gressette, chairman of the legislature's School Segregation Committee, and Farley Smith, son of the late United States Senator "Cotton Ed" Smith, and leader of South Carolina's independent "Dixiecrat" movement in the 1956 presidential campaign.

State Representative Joseph O. Rogers, Jr., vice chairman of the School Segregation Committee, predicted last fall that the grants will withstand attacks in the federal courts. Speaking in Charleston, Rogers said the General Assembly felt that "so long as educational opportunities are offered to all children, the program is a perfectly legal one." He added that most legislators agreed that "each parent should contribute an additional amount of money also."

Alabama

Alabama's law authorizing payment of tuition grants was passed in 1957 and amended in 1961. It permits local boards of education to close any schools within their jurisdictions if a board finds that "the continued operation of such school will be accompanied by such tensions, friction or potential disorder . . . as substantially to impair effective standards or objectives of education of its pupils. . . ."

The law also states that "the determination to discontinue the operation of any public school . . . shall be made by the board of education having jurisdiction thereof only after public hearings, held at a time and place fixed by the board."

If the public schools in a district are closed, the law permits a local board of education to make payments for the private education of children "for whom no public school is available," from "available school or education funds as the board shall determine to be reasonably necessary to enable such children to attend private nondenominational schools elected by their parents or guardians."

The first public school desegregation in Alabama came at the beginning of the 1963-64 school year in Birmingham, Huntsville, Macon County (Tuskegee) and Mobile, all by federal court orders. But when biracial classes began at the formerly all-white Tuskegee High, all the white students withdrew and most of them enrolled in a new private school called Macon Academy.

These students got no tuition grants. Tuskegee whites vowed they would finance their private school without state aid, lest the school's operation be disrupted if the courts ever ruled tuition grants illegal. Groups and individuals around the state contributed money to the Academy, among them state employees who gave $2,400 at the request of Governor George C. Wallace.

In December, 1963, the Southern Association of Schools and Colleges removed Tuskegee High School from its accredited list. Then on January 30, 1964, the State Board of Education, with Governor Wallace presiding as ex-officio chairman, ordered the school closed. The board authorized payments of tuition grants to students without a public school to attend.

Alabama Attorney-General Richmond Flowers opposed the board and advised Macon Academy not to accept "a single penny" of state funds. If it did, he warned, the private school would be open to desegregation orders and "end up like the high schools now have at Tuskegee, Notasulga and Shorter." The latter two public schools in Macon County were ordered to desegregate by U. S. District Judge Frank M. Johnson, Jr., of Montgomery, after the closing of Tuskegee High; Judge Johnson agreed that continued operation was uneconomic.

Several Alabama newspapers also criticized state intervention in Macon County, in a general hue and cry from desegregating localities, reminiscent of previous protests that federal government and civil rights workers are "outsiders" intruding on states' rights. This time, though, Alabamians anxious for orderly desegregation and continued public schools, cried that Wallace's state intervention was that of "outsiders" usurping local rights.

"The more ardent Wallace backers will wave complaint aside," declared the Birmingham *News* in an editorial February 1, "yet it is a simple fact that the Governor and the *state* board acting in concert have intruded themselves into *local* community matters. . . . The people of this state in majority, we believe, support much of the

Governor's program of advocacy of states' rights, of defending traditions and customs. But what of local Rights?"

The *South Alabamian* of Jackson commented the same week: "The answer to the problem may be difficult to come by, but it will not be found in abolishing the public school system in favor of individual grants to students for attendance at private schools. The public school system is a vital part of the state's government function; it cannot be allowed to die because of unfavorable federal legislation."

Fred Gray, a Negro attorney of Montgomery, filed an amendment to the original Macon County suit *(Lee et al v. Macon County Board of Education et al)* asking for a court order to desegregate every school system in Alabama. Presiding Judge Richmond T. Rives of the fifth circuit Court of Appeals called the Justice Department into the case and asked for briefs from both sides to discuss an injunction against Governor Wallace and state School Superintendent Austin R. Meadows to stop them from interfering with any Alabama desegregation; a court order to open all schools, because the state assumed control by closing Tuskegee High and authorizing grants to a private school, and whether Macon Academy had become a party to the county desegregation case, since petitioners considered it a part of the public school system.

On March 13 Justice entered the case with a brief asking the court to order statewide desegregation of public schools, the first time the Department had taken so broad a stand in a court action. It also asked the court to declare state financial aid to students in racially segregated private schools unconstitutional.

Already, though, the state had backed down from its intervention stance. On February 18, at the request of Governor Wallace, the State Supreme Court issued an advisory opinion that the State Board of Education has no control over local systems or authority to close their schools. In emergency session the same day, the board rescinded its order closing Tuskegee High and its directive to the Macon board to provide tuition grants to white students attending private schools.

Testimony of the state's Legislative Council in January 1964, had presaged the collapse of Alabama's tuition grant system. E. H. Howell, research specialist for the Legislative Reference Service, told the Council that the state would have a hard time finding a way to finance private schools with state money which would satisfy the federal courts. After casting about for a feasible tuition plan, Howell concluded that the courts would likely cut down any plan in those districts already desegregated by court orders, as attempts to circumvent those orders.

Further, Howell reported, any plan

approved by the courts would be entirely too costly, because the state would be obliged to pay expenses of Negroes seeking enrollment in private schools for white children.

The Council, requested by the Governor to study grant plans, apparently agreed with Howell; reluctantly, members decided to recommend no private school plan and ordered the Legislative Reference Service to submit Howell's report to the Governor.

As a means of evading integration, tuition grants bought time in Virginia and Louisiana for the timid, the prejudiced and the recalcitrant, at exorbitant cost in money, litigation and the education of many children.

In Virginia, while private schools have flourished, public schools remain among the nation's poorest academically and public school teachers among the nation's lowest paid and least schooled. In Georgia, children already in private schools overwhelmingly exercised the new "freedom of choice" for private white schools and the system proved to be both a farce and a failure. Grants-in-aid are already costing Louisiana $3,600,000 and the price may be even higher next year, if the grants survive. South Carolina may try to use its tuition grant plan, but if many other high school districts join Charleston in applying for grants after desegregation orders, the present $250,000 appropriation will be a drop in the big bucket of cost. In Alabama, by ordering grants in Macon county and assuming direction of a local school board, Governor Wallace and the state board failed to stop integration and may well have briskly accelerated it.

In sum, tuition grant programs appear to have cost enormously and achieved nothing but evasion of federal law and delay in southern adjustment to the new integrated order.

The "experiment in ignorance," as Solicitor General Cox termed the Prince Edward school closing and tuition grants, is clearly doomed by federal law and growing public aversion in the South to paying for privileged private schooling with common tax money. Once and for all rescued by the Supreme Court from this typical, sectional folly of intransigence and guile, the South can move on to the great, grave work of education of all of its children so long cheated by segregated systems of school.

Strictly Subjective

(Continued from page 2)

son Mr. Dure brought to bear on his thesis, characteristics not generally associated with the process of school desegregation in the South in those days. Apparently the politicians and other powers shrewdly picked Mr. Dure's busy brain and came out with "freedom of choice," "tuition grants" and "freedom *not* to associate," and legislated accordingly and craftily, without bothering with his assertion of constitutional Negro rights and acknowledgment of the rectitude of Negro aspiration.

Mr. Dure started out advocating "freedom of education" and "freedom of association" as the two "new" First Amendment freedoms, with the "freedom not to associate," an inherent part of the second one. To protests that the associational rights are personal and private, he rather tellingly replied that children are obliged to go to school and spend a third of their lives there, where associations are constant, intimate and influential, and that parents who prefer only white associations have the right "not to associate" their children with Negroes

whom they eschew as friends and companions.

When the law desegregated public parks, golf courses, libraries and auditoriums, white people avoided such association by staying home from parks, libraries and auditoriums, he pointed out, but compulsory attendance laws compel children to associate in public schools. So, to liberate whites from so fearful a betrayal of their prejudices, he pronounced the new freedoms.

Freedom of choice "abandons compulsory congregation in education," so that "whatever congregation takes place is individually agreeable," he wrote in the *Georgia Review* in 1962. So, parents who abhor association with colored people agreeably send their children to white private schools, and whites and Negro parents who don't care or prefer integration quite as agreeably, it is presumed, patronize mixed public schools.

"Everything is working out far better than anyone could have hoped," he wrote. "All symptons of those associational troubles that plagued Little Rock and New Orleans and, indeed, closed schools for 14,000 Virginia school children appear gone. Predictions . . . that individual freedom in education will mean better, more and cheaper education appear valid. New educational needs and possibilities are popping up here and there. Some think the state already has been exposed as a clumsy, careless and unimaginative baby sitter . . . The Virginia school plan may be recognizable as one of the most fascinating educational experiments of all time."

The father of free choice several years ago seemed thus elated at the opportunity of many Virginia children, choosing not to associate, to study at private schools at state expense and viewed the tuition investment in more soundly educated citizens as a bargain. He also regarded the angry opposition of people who run the public schools as a healthy sign of their fear of private school competition and a promise that they would meet the competition with better teaching and less baby-sitting. Considering the astonishing ignorance of many publicly educated young citizens of the South, who don't know where New Guinea is, what is in the Magna Carta, when Louisiana was purchased, what is a hypotenuse, who Gallileo was, or how to put such information into sentences if they could read and spell well enough to learn it, Mr. Dure's faith in tuition grants to improve public schools had great appeal.

His view of the right not to associate, thus expounded in the *Georgia Review,* seemed less attractive and more vulnerable: "What the Supreme Court had done (in 1954), then was to establish the right of any individual, represented by the Negro, to go to, and to associate in, a public place. But if this were true, was not another right automatically in being; the right of an individual not to go to, and to associate in, a public place? And, actually, is not the whole thought embraced by the freedom of assembly of the First Amendment? . . . Indeed, are not all our First Amendment freedoms like coins that have their negative sides, too? The Freedom of speech includes the right of silence, the freedom of religion includes the right not to go to church, the freedom of assembly includes the right to stay home. Hence any freedom of association must include the right not to associate. And when these positive and negative rights collide, as they plainly do all day long, does not the negative right take precedence?"

He pointed out that the South had at that time already surrendered much of its segregation-by-law, but had been

in "frenzy" and "almost open insurrection against desegregation of schools," because "the negative right to stay at home or not to associate . . . is not present in the case of schools," where a child is "ordered to a school and forced to stay there . . . for six hours a day, nine months out of the year, ten or more years."

"If the individual freedom of association can be elevated to the standing of those other First Amendment freedoms, might we not have another tolerant standard by which to put up with

Leon S. Dure

human behavior?" he asked. "There has been no school incident of any sort since 'Freedom of Choice' was initiated."

I do not know to what extent Virginia's several million-dollar-a-year expenditure on tuition grants has elevated learning and enlarged the children attending private schools, but I dare say the gains have been considerable for pupils in established and distinguished private schools instead of public schools which the Virginia Education Association appraises as among the country's poorest. But this does seem a devious and cumbersome way to go about improving sorry public schools: to pay children to leave them for private academies and thus alarm public school administrators into improved curriculum and instruction, for fear more of their constituency will depart for better schools than public ones.

It seems to me that Mr. Dure might have contributed a greater service to his state and the South by directly attacking the incompetence of most public schools in the South. If he had devoted so much intelligence, eloquence, time and fervor to exposing the willful ignorance of the still prevailing educationists and the tenacity with which they deny learning to so many children, he might have wrought a revolution in public schooling. Instead, alas, he chose to excite Southerners to spend these years of passion, politics and money trying to keep segregated in double school systems which never have done an equal or respectable job of teaching any of our children. He might, perhaps, have started the South more directly, honestly and soberly on its most important and difficult duty of really educating all southern children without the sectional discrimination of schools inferior to those in other states and human discrimination of even more inferior schools for Negro children.

However, the towering arrogance of the Dure Freedom of Choice doctrine, conceived to protest and perpetuate the ancient and despicable southern illusion that some whites are too good to permit proximity with colored people in public places, seems too innocent and insolent to be taken seriously. This mockery of law and its uses in a democracy—to pamper the pride of prejudiced white people

with privileged and expensive isolation in private schools, because they choose "not to associate" with fellow humans in accepting a government benefit like schooling—is a folly which few men but Leon Dure would have had the eloquence and tenacity to foist on those southern states.

I would differ with Mr. Dure, in the first place, that the 1954 decision "established the right" of Negroes to "associate in a public place." I read that right as one to equal schooling, free access to this public service and relief from the stigma of segregation. Neither the suing Negroes or the court had anything to say about "freedom of association," which is, after all a private and personal right limited, constitutionally and socially, by each man's taste and preference. Association is a possible and likely result of desegregation, but scarcely an aspiration public enough to be exalted into a First Amendment freedom. White children in school or white golfers in the park enjoy the "right" Mr. Dure properly holds to be the more sacred, that "not to associate," just as white pedestrians may disassociate themselves from Negros on the sidewalk, or vice-versa, and as white and Negro shoppers may do in the same super market on a Friday night, when grocery buyers of all colors are in quite as close "congregation" as children in school or ball players on the public playground. And they associate or not, some black and white housewives bemoaning the price of hamburger at the meat counter together, others nodding and smiling as their carts collide or their children reach to one another, and others disassociating as if their neighbors were so many typhoid Marys or otherwise untouchable.

So, it seems to me that Mr. Dure has dredged up a new "right" out of spurious threat to personal liberty, and with his rational and seductive structure of argument, talked Virginia and other states into a complicated, expensive and quite inhuman system of defending snobs and psychotics from natural and proper public proximity with their colored fellow bipeds.

Well it was interesting while it lasted, particularly for the Negro children of Prince Edward County who went four years without any school at all.

But, Mr. Dure, what an elegant lot of intellectualizing, preaching, writing, traveling and politicking to provide *some* children freedom from association with other children, because their parents fancy your specious new right and fear the color of neighbors they've lived with all their lives.